

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/12/2021

YIEN-KOO KING,

Plaintiff,

-v-

ANDREW WANG, et al.,

Defendants.

14-cv-7694 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

The Court has scheduled the Jury trial in this matter for November 29, 2021. The final pretrial conference is scheduled for November 18, 2021. The joint pretrial order is due to be submitted on November 16, 2021 at 3:00 p.m. A number of pretrial motions are still pending. In addition, Defendant has requested an expedited schedule for a renewed motion for summary judgment, which is resisted by Plaintiff. Dkt. No. 307. Plaintiff has suggested that the Court hold a conference in advance of the final pretrial conference. In lieu of conducting such a conference in advance of the final pretrial conference, and to aid the parties in connection with their planning for trial, the Court provides the following information and addresses the outstanding pretrial issues before it.

1. The parties should be aware that although this case is scheduled for trial before a Jury on November 29, 2021, the trial will go forward on that date only if a Jury is available. At the moment, there are several cases ahead of this one in the Jury trial queue for November 29. It has been the experience of the Court that the line for obtaining a Jury shortens as the trial date approaches and as cases settle. The Court thus intends and plans to proceed with trial before a Jury on November 29 if it is able to obtain a Jury on that date. The parties also should plan to go to trial on that date. However, the Court cannot guarantee that a Jury will be available. In the event that the Court is not able to obtain a Jury on November 29, and given the amount of time this case has been outstanding, the Court will proceed to trial as soon thereafter as it is able to procure a Jury. In that event, the parties are ordered to be ready for trial on 24 hours notice.
2. The outstanding motion to bifurcate the trial into two separate phases, liability and damages—as raised in Defendants’ motions in limine at Dkt. No. 256 and referenced by Plaintiff in its letter at Dkt. No. 12—is denied. As previously indicated, the Court will try the amount of punitive damages separately before the Jury in the event that the Jury determines that Plaintiff is entitled to punitive damages. All other issues will be tried

together.

3. The outstanding motion to preclude evidence of appreciation damages, at Dkt. No. 256, is granted in part and denied in part, with an opinion to follow. Evidence of appreciation damages will be admissible for Plaintiff's state law breach of fiduciary duty claim, but will not be admissible as evidence of RICO damages.
4. With regard to Defendants' request for an expedited summary judgment briefing schedule, at Dkt. No. 307, the Court will receive a renewed motion for summary judgment on the following schedule: Defendants may file a renewed motion for summary judgment by Tuesday, November 16, 2021, at 5:00 p.m. The Court will proceed to review the motion if it is unable to procure a Jury for November 29, 2021. In that event, Plaintiff may file its response by Friday, December 3, 2021 at 5:00 p.m., and Defendants may file a reply by December 10, 2021 at 5:00 p.m. In the event that the Court is able to procure a Jury for November 29, the Court will not suspend the Jury trial to review the motion for summary judgment. However, the Court will consider Defendants' motion papers along with any other memorandum Defendants may submit in connection with a motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 at the end of Plaintiff's case. Plaintiff will be given an opportunity to respond.

The Clerk of Court is respectfully directed to terminate the pending motion at Dkt. No. 307.

SO ORDERED.

Dated: November 12, 2021
New York, New York



LEWIS J. LIMAN
United States District Judge